IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.431 OF 2005
IN
SUIT NO.350 OF 1993

Vasant Shankar Sawant & Ors. ..Appellants.

Vs.

Deshmukh & Associates & Ors. ..Respondents.
(Orig.Plffs. &
some defts.)

Mr.R.V.Govilkar i/b.Mr.M.C.Dixit for the Appellants.

Mr.P.S.Dani with Mr.Shah with Mr.a.W.Jogdand for Respondent No.1.

Mr.M.Vasudeo with Mr.Pooniwala for Respondent No.2.

Mr.Vaibhav Joglekar for Respondent Nos.3 to 23.

Mr.R.S.Apte for Respondent Nos.24 to 38.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 3RD MAY, 2005

P.C :

Mr.Govilkar has stated that this Appeal is directed against only that part of the order of the learned single Judge whereby he has permitted to withdraw Suit No.350 of 1993 with liberty to file a fresh suit under Order XXIII Rule 3 of the C.P.C. He submitted that as far as the order passed in First Appeal Nos.386 of 2000 and 387 of 2000 is concerned, the Appellant will adopt appropriate proceedings in accordance with law.

2. As far as the present Appeal is concerned, the only submission of Mr.Govilkar is that the non-registration of the partnership firm is not a formal defect and, therefore, the Court has no power to allow the Plaintiff to withdraw the suit under Order XXIII Rule 3 of the C.P.C.

3. This issue is now covered by the decision of the Supreme Court in *Haldiram Bhujiawala & Anr. v. Anand Kumar Deepak Kumar & Anr. (2003) 3 Supreme Court Cases, 250*. The Supreme Court has held that if the firm is not registered on the date of suit and the suit is to enforce a right arising out of a contract with the third-party defendant in the course of its business, then it will be open to the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm subject to the provisions of the Limitation Act.

4. There is thus no error committed by the learned single Judge in allowing the Plaintiff to withdraw the suit with liberty to file a fresh suit.

5. Appeal is dismissed.